



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 30, 1993

Mr. Jim French
Executive Director
Economic Development Corporation
of Copperas Cove
408 South Main Street, Suite 201
Copperas Cove, Texas 76522

OR93-729

Dear Mr. French:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552.¹ Your request was assigned ID# 21859.

The Economic Development Corporation of Copperas Cove ("EDC") has received an open records request for "the financial reports from No Touch, Inc. to the EDC for May 1993, June 1993 and July 1993" and "any beginning financial report submitted before [No Touch] was approved." You have submitted for our review four memoranda from No Touch to EDC and a financial summary concerning No Touch. Neither EDC nor No Touch objects to the release of some of the information contained in these documents. You contend, however, that certain information pertaining to No Touch's business development strategies and customer lists is excepted from disclosure by section 552.110 (former section 3(a)(10)) of the Open Records Act.

Section 552.110 excepts "[a] trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." The Texas Supreme Court has adopted the definition of trade secret from the Restatement

¹We note that the Seventy-Third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

of Torts, section 757 (1939). *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958). A trade secret

may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives [one] an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. . . . A trade secret is a process or device for continuous use in the operation of the business. Generally it relates to the production of goods, as for example, a machine or formula for the production of an article. It may, however, relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939). The Restatement lists six factors that should be considered when determining whether information is a trade secret:

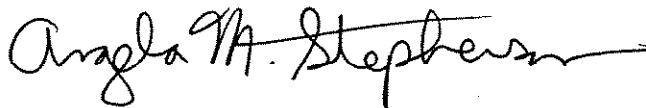
(1) the extent to which the information is known outside of [the company's] business; (2) the extent to which it is known by employees and others involved in [the company's] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and to [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Id. The governmental body or the company whose records are at issue must make a prima facie case for exception as a trade secret under section 552.110. *See* Open Records Decision No. 552 (1990) at 5.

Both EDC and No Touch assert that the information at issue here constitutes trade secrets. In briefs submitted to this office, EDC and No Touch illustrate the application of each of the Restatement factors to the information you seek to withhold. In particular, No Touch describes the extensive measures that it has taken to maintain the secrecy of its customer lists and business plans. Because EDC and No Touch have made a prima facie case that the information at issue constitutes trade secrets, you may withhold this information from disclosure under section 552.110. If you have not already released the remainder of the information, you should do so promptly.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,

A handwritten signature in black ink, reading "Angela M. Stepherson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Angela M. Stepherson
Assistant Attorney General
Open Government Section

AMS/JET/rho

Ref.: ID# 21859, ID# 21989
ID# 22024, ID# 22025
ID# 22060, ID# 22137
ID# 22147

Enclosures: Submitted documents

cc: Ms. Teresa Cleghorn
Copperas Cove Leader - Press
115 East Avenue E.
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(w/o enclosures)